



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 4, 2004

Ms. Margaret A. Roll  
Assistant General Counsel  
Texas Department of Human Services  
P. O. Box 149030  
Austin, Texas 78714-9030

OR2004-6571

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 206417.

The Texas Department of Human Services (the "department") received a request for information related to Chandler Health Care Center from 2001 and 2002. You state that some responsive information has been released to the requestor. You claim that some of the remaining requested information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the information at issue is the basis of a pending lawsuit between the Office of the Attorney General and the department, *Texas Department of Human Services v. Abbott*, Cause No. GN302639, in the 53<sup>rd</sup> District Court of Travis County, Texas. Accordingly, we do not address the information that is at issue in the pending litigation and will allow the trial court to resolve the issue of whether this information must be released. To the extent that the information requested in this instance was not at issue in the above referenced litigation, we will address your arguments for the information you have submitted.

Next, we note, and you acknowledge, that the department has not sought an open records decision from this office within the time periods prescribed by section 552.301 of the Government Code. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. See Gov't

Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling interest to withhold the information. See Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As the presumption of openness can be overcome by a showing that information is confidential by law, we will consider your arguments under sections 552.101, 552.130, 552.136, and 552.137.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 58.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 58.001. Accordingly, we find that the social security numbers of licensees that you have marked are confidential under section 58.001 of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

You assert that some of the remaining submitted information is subject to section 48.101 of the Human Resources Code. This section provides in relevant part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

Hum. Res. Code § 48.101(a). You inform us office that the department is responsible for licensing assisted living facilities. You further state that, as the licensing agency, the department is also responsible for investigating complaints of abuse, neglect, or exploitation involving these types of facilities. *See id.* § 48.301. Based on your representations, we believe that a portion of the remaining submitted information constitutes files, reports, records, communications, and working papers used or developed in an investigation made under chapter 48 of the Human Resources Code or in providing services as a result of an investigation. The information at issue is therefore confidential under section 48.101 of the Human Resources Code.

Section 48.101 further provides that “[c]onfidential information may be disclosed only for a purpose consistent with this chapter and as provided by [Department of Protective and Regulatory Services] or investigating state agency rule and applicable federal law.” *Id.* § 48.101(b). You inform this office that the rules adopted by the department for the release of information used or developed in an investigation are found at section 92.106 of title 40 of the Texas Administrative Code. Section 92.106 provides in relevant part:

(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Human Services (DHS) in an investigation are confidential, and may be released only as provided in this subsection.

...

(2) Completed written investigation reports are open to the public, provided the report is deidentified. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to the department as part of the investigation.

40 T.A.C. § 92.106(a)(2). We have marked the information that the department must withhold pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code and section 92.106 of title 40 of the Texas Administrative Code.

Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov’t Code* § 552.130. Accordingly, we agree that the department must withhold the submitted Texas driver’s license information under section 552.130 of the Government Code.

You also claim that a portion of the submitted information is excepted from public disclosure under section 552.136 of the Government Code, which provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov’t Code § 552.136. Accordingly, we conclude that the department must withhold the information that we have marked pursuant to section 552.136 of the Government Code.

Finally, section 552.137 of the Government Code provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

...

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee’s work e-mail address or a business’s general e-mail address or web address. We find that the e-mail address you have marked is excepted from disclosure under section 552.137(a). Accordingly, we conclude that, unless consent to

release has been granted, the board must withhold this e-mail address pursuant to section 552.137(a) of the Government Code.

In summary, we do not address the information that is at issue in the pending litigation and will allow the trial court to resolve the issue of whether this information must be released. Social security numbers of licensees are confidential under section 58.001 of the Occupations Code and must be withheld under section 552.101 of the Government Code. We have marked the information that the department must withhold pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code and section 92.106 of title 40 of the Texas Administrative Code. The department must withhold the marked section 552.130, 552.136, and 552.137 information. The remaining submitted information must be released to the requestor.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>1</sup> As our ruling is dispositive, we do not address your remaining claims.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/krl

Ref: ID# 206417  
Enc. Submitted documents

c: Ms. Patty Lauderdale  
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(w/o enclosures)